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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JERICHO NICOLAS an individual,  
et al., On Behalf of Themselves and  
All Others Similarly Situated and  
Aggrieved;

### **Plaintiffs.**

V

UBER TECHNOLOGIES, INC, a  
Delaware Corporation; and DOES 1  
through 10.

## Defendants

CASE NO.: 4:19-cv-08228-PJH

**CLASS ACTION – THIRD  
AMENDED COMPLAINT FOR  
DAMAGES, PENALTIES,  
ATTORNEYS FEES, AND  
INJUNCTIVE RELIEF FOR, *INTER  
ALIA*, LABOR CODE WAGE AND  
HOUR VIOLATIONS**

## **DEMAND FOR JURY TRIAL**

Plaintiffs Jericho Nicolas, Juan Montalvo, Gary Baumgarten, Christine Tringali, Carlos Alvarez, Rick Anderson, Kamal Suri, Jorge Jimenez, Jaime Del Real, Lisette Castillo, Benjamin Laney, Kelly Clifton, Eric Calvillo Hernandez, Steven Robert Callahan, Juan Jamarron, , Richard Trujillo, Marcos Montes, Barton Lasheem, Dora Waters, , Rolando Vega, Shamar Drew, Zuleyma Torres, Sevak Vartanpour, Claudia Duque, Timothy Kershaw, Kevin Byler, Yhon Lara, Royal Gaston, Majd Iskandafi, Alexi Vinnik, , Bryant Castaneda, Christine Economos, Carlos Torres, Christopher Campana, Gustavo Candeló, James Sparks, Jason Casas, Jose Contreras, Juan Castro, Kamal Suri, Karen Y. Alvarez, Syed Naqvi, Wayne Merritt, Williams Ramirez, Laura Alvarado Hernandez, Sherif Bebawy, on behalf of themselves only (collectively referred herein as “Non-Representative Plaintiffs”) and Mark Glinoga, Kevin Neely and Alexis Gonzalez (Glinoga, Neely and Gonzalez shall be, from time to time, collectively referred to as “Plaintiffs”) on behalf of themselves and acting for the interests of other current and former employees, allege as follows:

## **NATURE OF THE ACTION**

1. This is a wage and hour class action pursuant to California Code of Civil Procedure § 382, on behalf of Plaintiffs and all individuals working or having worked as “ride-share drivers” (“Class Members”) for Defendant UBER TECHNOLOGIES, INC., (hereinafter “UBER” or “DEFENDANT EMPLOYER”) within the State of California. The Non-Representative Plaintiffs seek a remedy for their respective individual claims only and will pursue those claims through arbitration.

2. Plaintiffs are informed and believe and, based thereon allege, that the Class Members consist of approximately 50,000-75,000 current and former UBER employees who worked as UBER "ride-share drivers" and who opted out of the arbitration provision.

11

1       3. From at least April 2018, when the *Dynamex* decision was issued by  
 2 the California Supreme Court, and continuing to the present, and pursuant to  
 3 company policy and/or practice and/or direction, UBER failed to pay Plaintiffs and  
 4 other Class Members minimum wage and/or overtime, and UBER did not reimburse  
 5 for work-related expenses, such as mileage and cell phone usage.

6       4. From at least April 2018 and continuing to the present, and pursuant to  
 7 company policy and/or practice and/or direction, UBER intentionally misclassified  
 8 Plaintiffs and other Class Members as independent contractors when they were  
 9 employees under the law.

10      5. From at least April 2018 and continuing to the present, and pursuant to  
 11 company policy and/or practice and/or direction, for certain Plaintiffs and other  
 12 Class Members, UBER failed to: (1) provide final paychecks immediately upon  
 13 involuntary termination or within 72 hours of voluntary separation; (2) pay final  
 14 wages at the location of employment; and (3) include all wages due in the final  
 15 paychecks.

16      6. Plaintiffs, on behalf of themselves and all Class Members, bring this  
 17 action pursuant to California Labor Code §§ 201, 203, 226, 226.8, 510, 1197,  
 18 2082, 2750.3, 2698 et seq., 2998 et seq., California Code of Regulations, Title 8, §  
 19 11050, and Industrial Welfare Commission Wage Order No. 4, for unpaid wages,  
 20 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and  
 21 costs.

22      7. Plaintiffs, on behalf of themselves and all Class Members, pursuant  
 23 to Business & Professions Code §§ 17200-17208, also seek injunctive relief,  
 24 restitution, and other available relief for the violations alleged in this Complaint.

#### JURISDICTION AND VENUE

26      8. This Court has jurisdiction over the subject matter of this action  
 27 pursuant to 28 U.S.C. § 1332 et. seq. This action arises under the Class Action  
 28 Fairness Act ("CAFA") because at least one Class Member is a citizen of a different

1 state than the Defendants, the amount in controversy exceeds \$5,000,000.00,  
 2 exclusive of interests and costs, and none of the exceptions of the CAFA apply.  
 3 Furthermore, jurisdiction is proper in this Court because the amount in controversy  
 4 exceeds \$75,000.00, exclusive of interests and costs, and the dispute is between  
 5 citizens of different States.

6       9. This Court has personal jurisdiction over UBER because UBER  
 7 conducts business in California, is headquartered in California, and because the  
 8 events or transactions giving rise to this action occurred within California.

9       10. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the U.S. District  
 10 Court for the Northern District of California because UBER maintains its  
 11 headquarters in the City of San Francisco, County of San Francisco, and UBER  
 12 conducts significant business in this District.

### PARTIES

11       11. The named Plaintiffs and Non-Representative Plaintiffs Jericho  
 12 Nicolas, Juan Montalvo, Gary Baumgarten, Christine Tringali, Carlos Alvarez, Rick  
 13 Anderson, Kamal Suri, Jorge Jimenez, Jaime Del Real, Lisette Castillo, Benjamin  
 14 Laney, Kelly Clifton, Eric Calvillo Hernandez, Steven Robert Callahan, Juan  
 15 Jamarron, Mark Glinoga, Richard Trujillo, Marcos Montes, Barton Lasheem, Dora  
 16 Waters, Kevin Neely, Rolando Vega, Shamar Drew, Zuleyma Torres, Sevak  
 17 Vartanpour, Claudia Duque, Timothy Kershaw, Kevin Byler, Yhon Lara, Royal  
 18 Gaston, Majd Iskandafi, Alexi Vinnik, Alexis Gonzalez, Bryant Castaneda,  
 19 Christine Economos, Carlos Torres, Christopher Campana, Gustavo Cadelo,  
 20 James Sparks, Jason Casas, Jose Contreras, Juan Castro, Kamal Suri, Karen Y.  
 21 Alvarez, Syed Naqvi, Wayne Merritt, Williams Ramirez, Laura Alvarado  
 22 Hernandez, Sherif Bebawy are each a natural person and a citizen of the State of  
 23 California.

24       12. Defendant UBER TECHNOLOGIES, INC. (hereinafter “UBER” or  
 25 “DEFENDANT EMPLOYER”) is, and at all times herein mentioned, was a

1 Delaware corporation, with the capacity to sue and to be sued, and doing business,  
 2 with the same principal place of business located at 1455 Market Street, #400, San  
 3 Francisco, California 94103.

4       13. The true names and capacities of the Defendants named herein as  
 5 DOES 1 through 10, inclusive, whether individual, corporate, partnership,  
 6 association, or otherwise, are unknown to Plaintiffs who therefore sue these  
 7 Defendants by such fictitious names. Plaintiffs will request leave of court to amend  
 8 this Complaint to allege their true names and capacities at such time as they are  
 9 ascertained.

10      14. Plaintiffs are informed and believe and, thereon allege, that each of the  
 11 Defendants herein were at all times the agent, employee, or representative of each  
 12 remaining Defendant and were at all times herein acting within the scope and  
 13 purpose of said agency and employment. Plaintiffs further allege that as to each  
 14 Defendant, whether named or referred to as a fictitious name, supervised, ratified,  
 15 controlled, acquiesced in, adopted, directed, substantially participated in, and/or  
 16 approved the acts, errors, or omissions, of each remaining Defendant.

### **GENERAL ALLEGATIONS**

18      15. Defendant UBER developed and maintains a technology platform that  
 19 connects riders with ride-share drivers, such as Plaintiffs and all Class Members  
 20 herein, through an application on their respective mobile devices.

21      16. UBER charges the rider a fee and uses a portion of the money collected  
 22 from the rider to pay Plaintiffs and all Class Members herein.

23      17. UBER's business model is inextricably linked to the work of Plaintiffs  
 24 and all Class Members herein transporting the riders, as UBER collects money from  
 25 a rider after the rider utilizes a Plaintiff or Class member through UBER's  
 26 application.

27      18. Without the Class Members' work in transporting paying-riders,  
 28 UBER would not exist as it is known today.

19. Since the inception of UBER's ride-sharing service, Class Members have been treated as independent contractors so that they are not entitled to any of the protections an employee would have under California law.

20. In April 2018, the California Supreme Court, in the now-infamous *Dynamex* decision, ruled that companies must successfully meet the three prong “ABC” test in order to lawfully classify someone as an independent contractor for purposes of Wage Order claims. *Dynamex Operations West v. Superior Court*, 4 Cal.5th 903 (2018); see also *Garcia v. Border Transportation Group, LLC*, 28 Cal. App. 5th 558 (2018). The ABC test requires an employer to prove the following to justify “independent contractor” classification: (A) the worker is free from the control and direction of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact; (B) the worker performs work that is outside the usual course of the hiring entity's business; and (C) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity. See *Dynamex*, at 958-963.

21. On September 18, 2019, California Governor Gavin Newsom signed Assembly Bill 5 (“AB5”), commonly referred to as the “gig worker law.” AB5 codified *Dynamex*’s ABC Test under the soon-to-be-added Labor Code § 2750.3, creating a rebuttable presumption that a worker is an employee unless the test is met, and explicitly exempted certain trades and professions. Neither the Class Members or ride-share companies, like UBER, were exempted under AB5.<sup>1</sup>

22. Leading up to AB5's passage, UBER declared it would continue to treat its drivers, like Plaintiffs and Class Members herein, as independent

<sup>1</sup> California Legislature, *Assembly Bill 5: employees and independent contractors*, “Today’s Law As Amended.” [https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201920200AB5](https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200AB5) (accessed Oct. 31, 2019).

1 contractors after AB5 becomes law: “just because the [ABC] test is hard does not  
 2 mean [UBER] will not be able to pass it.”<sup>2</sup>

3       23. Since the April 2018 *Dynamex* decision, and after not being exempt  
 4 from AB5, UBER continues and will continue to treat Plaintiffs and Class Members  
 5 as independent contractors despite UBER’s inability to meet the ABC test.

6                          **PLAINTIFFS AND CLASS MEMBERS ARE UBER’S EMPLOYEES**

7       24. **Plaintiffs Are Not Free of the Control & Direction of UBER in  
 8 the Performance of Work.**

9       25. For all relevant times, without any input from Class Members, UBER  
 10 controls and directs the terms and conditions of the Class Members work  
 11 equipment, work environment, the way work is performed, and the manner in  
 12 which drivers behave towards riders.

13       26. For all relevant times, UBER controls and directs the performance of  
 14 work of Class Members by way of minimum vehicle requirements for vehicles a  
 15 driver can utilize before allowing access to riders through its application.  
 16 Specifically, UBER has the following vehicle requirements:

- 17                          • 15-year-old vehicle or newer
- 18                          • 4-door vehicle
- 19                          • Good condition with no cosmetic damage
- 20                          • No commercial branding
- 21                          • Pass a vehicle inspection.<sup>3</sup>

22       27. For all relevant times, UBER controls and directs the performance of  
 23 work of Class Members by way of minimum cosmetic guidelines for vehicles a  
 24  
 25

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26       2       Uber Newsroom, “Update on AB5,” Sept. 12, 2019, <https://www.uber.com/newsroom/ab5-update/> (accessed Oct. 31, 2019).

27       3       “Vehicle Requirements,” <https://www.uber.com/drive/los-angeles/vehicle-requirements/> (accessed Oct. 30, 2019.)

1 ride-share driver can utilize before allowing access to riders through its  
 2 application. Specifically, UBER prohibits:

- 3           • Full-body wraps containing advertisements, or  
         any large ads
- 4           • Holes in exterior
- 5           • Taxi decals or taxi-style paint
- 6           • Significant damage to interior (torn seats, large  
         permanent stains, strong permanent odors)
- 7           • Paint Oxidation
- 8           • Different colored hoods/doors
- 9           • Aftermarket modifications
- 10          • Window tinting must be within acceptable  
         California regulations.<sup>4</sup>

12         28. For all relevant times, UBER controls and directs the performance of  
 work by determining the minimum experience for Class Members in that they all  
 13 must “meet the minimum age to drive in [their] city; [and] [h]ave at least one year  
 14 of licensed driving experience in the US (3 years if you are under 23 years old).”<sup>5</sup>

16         29. For all relevant times, UBER controls and directs the performance of  
 work of Class Members by requiring successfully passing a background check.<sup>6</sup>  
 Upon information and belief, UBER will not allow a driver to work as its ride-  
 17 share driver if the background check reveals either of the following: (1) any major  
 18 moving violations within the last seven years; (2) more than three minor moving  
 19 violations in the last three years; or (3) a criminal conviction within the last seven  
 20 years for a felony, violent crime, or sexual offense.<sup>7</sup>

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23  
 24  
 25  
<sup>4</sup> *Id.*

26         <sup>5</sup> “Driver Requirements,” <https://www.uber.com/us/en/drive/requirements>

27         <sup>6</sup> *Id.*

28         <sup>7</sup> “What Disqualifies Drivers During an Uber Background Check,”  
<https://www.ridester.com/uber-background-check/> (accessed Oct. 31, 2019.)

1       30. For all relevant times, UBER controls and directs the performance of  
 2 work of ride-share drivers by requiring a vehicle used by a Class Member to have  
 3 a certain level of cleanliness.<sup>8</sup>

4       31. For all relevant times, UBER controls and directs the performance of  
 5 work of Class Members by setting limits on how long a ride-share driver can drive  
 6 as an UBER driver before UBER will have the application go “offline” for a  
 7 driver.<sup>9</sup>

8       32. For all relevant times, UBER controls and directs the performance of  
 9 work of ride-share drivers by requiring its drivers to provide a 5-star experience  
 10 by maintaining high standards of quality that can be taught by UBER approved  
 11 services.<sup>10</sup>

12       **33. Plaintiffs Do Not Perform Work Outside the Usual Course of  
 13 UBER’s Business.**

14       34. For all relevant times, UBER’s usual course of business is the  
 15 transportation of people. In UBER’s own words:

16           What started as a way to tap a button to get a ride has  
 17 led to billions of moments of human connection as  
 18 people around the world go all kinds of places in all  
 19 kinds of ways with the help of our technology . . .  
*Transportation isn’t the only thing we’re changing*  
 20 through our technology.<sup>11</sup> On-demand transportation  
 21 technology is our core service, and the app that

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22       <sup>8</sup> “Keeping Your Vehicle Clean,” <https://help.uber.com/partners/article/keeping-your-vehicle-clean?nodeId=39695c4b-aafa-443a-a99f-1567d7215db6>.  
 23 (accessed Oct. 31, 2019.)

24       <sup>9</sup> “Driver Time,” <https://help.uber.com/partners/article/driving-time?nodeId=c8785b5d-e2eb-42be-8c99-000d111e06d0>. (accessed Oct. 31, 2019.)

25       <sup>10</sup> “Quality Improvement Courses,” <https://help.uber.com/partners/article/quality-improvement-courses?nodeId=9deed9cc-6221-43f8-b699-aaf0d0653569>; “Understanding Ratings” <https://help.uber.com/partners/article/understanding-ratings?nodeId=fa1eb77f-ad79-4607-9651-72b932be30b7> (accessed Oct. 31, 2019.)

26       <sup>11</sup> “About,” <https://www.uber.com/us/en/about/> accessed Oct. 31, 2019.)

1                   connects driver-partners and riders is what makes it all  
 2                   possible.<sup>12</sup>

3       35. For all relevant times, Plaintiffs and all other Class Members work  
 4                   within UBER's usual course of business of the transportation of people by driving  
 5                   UBER's customers from place to place.

6       **36. Plaintiffs Do Not Have an Independently Established Trade,  
 7                   Occupation, or Business of Ride-Sharing.**

8       37. For all relevant times, Plaintiffs and all other Class Members do not  
 9                   provide ride-share services "independently" of their relationship with UBER.

10      38. For all relevant times, Plaintiffs and all other Class Members report  
 11                   their work done exclusively to UBER through the UBER phone application.

12      39. For all relevant times, Plaintiffs and all other Class Members  
 13                   managed no people.

14      40. For all relevant times, Plaintiffs and Class Members are working for  
 15                   UBER from the time they turn on the application to wait for a ride-share request up  
 16                   until they turn off the application after the last drop off.

17      41. For all relevant times, Plaintiffs and Class Members' duties as ride-  
 18                   share drivers did not qualify them as exempt for purposes of the overtime law.

19      42. For all relevant times, Plaintiffs and Class Members were entitled to  
 20                   minimum wage for every hour they worked.

21      43. For all relevant times, Plaintiffs and Class Members worked about 40  
 22                   hours per week, sometimes more, sometimes less.

23      44. For all relevant times, upon information and belief, Plaintiffs and Class  
 24                   Members were not paid time and a half for any overtime they worked nor were they

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27      28      <sup>12</sup> "How Uber Works," <https://www.uber.com/us/en/about/how-does-uber-work/> (accessed Oct. 31, 2019.)

1 paid after the paycheck was due and were underpaid for the hours worked to the  
2 extent the pay did not meet the minimum wage requirements.

3       45. Under California law, all wages must be paid twice during each  
4 calendar month as set forth in Labor Code § 204(a).

5       46. Under California law, all nonexempt employees are entitled to time  
6 and a half for each hour worked in excess of 40 in a week and double time pay for  
7 hours worked over 12 in a day or for every hour after the first eight on the seventh  
8 day of work.

9       47. Under California law, all employees must be paid at least the minimum  
10 wage for every hour worked.

11      48. Under California law, employees must be reimbursed for business  
12 related expenses.

13      49. For all relevant times, Plaintiffs and Class Members were not  
14 reimbursed for use of their cell phone in using the UBER application or for mileage  
15 they put on their vehicle while carrying out their duties for UBER.

16      50. Under California law, all employers must provide wage statements  
17 listing twelve specific items as set forth in Labor Code § 226, including the accurate  
18 accounting of hours worked.

19      51. For all relevant times, Plaintiffs and Class Members were underpaid  
20 for hours worked, even to the extent that UBER was not paying the minimum  
21 wage.

22      52. For all relevant times, Plaintiffs and Class Members were not paid  
23 time and a half for all the overtime hours they worked on those periods they  
24 received wages late.

25      53. For all relevant times, when Plaintiffs and Class Members were fired,  
26 UBER failed to provide unpaid wages or commissions in their last paycheck.

27      54. To date, UBER has not paid Plaintiffs and Class Members all their  
28 wages due and payable to them, in an amount to be proven at trial.

1           **SPECIFIC ALLEGATIONS CONCERNING LABOR CODE VIOLATIONS**

2           55. Since March 1, 2019, Plaintiffs Mark Glinoga (hereinafter  
3           “GLINOGA”), Alexis Gonzales (hereinafter “GONZALES”), and Kevin Neely  
4           (“hereinafter “NEELY”) (Collectively referred to as “Plaintiffs”), began working as  
5           UBER drivers by use of the UBER application, use of their own car, and with the  
6           use of their own money for maintenance of the vehicle and phone used to carry out  
7           their duties for UBER.

8           56. Specifically, GLINOGA, GONZALEZ and NEELY have used  
9           Defendant UBER’s application since March 1, 2019 to provide the transportation  
10          service to UBER customers by turning on UBER’s driver app and set the settings  
11          so that they can see and accept UBER customer requests for a ride through the  
12          UBER application.

13          57. In this manner, since March 1, 2019, GLINOGA, GONZALEZ and  
14          NEELY have had the application set to “on,” waiting for an UBER customer request  
15          for long periods of time; often times spending more time waiting for a ride request  
16          than driving a customer resulting in the compensation for said ride or rides over the  
17          course of a week to come out to less than minimum wage per hour.

18          58. Also, since March 1, 2019, GLINOGA, GONZALEZ and NEELY  
19          regularly had the UBER application on, waiting for and providing for UBER  
20          customers for over 8 hours a day, after having done this function 40 hours in a week.  
21          In the instances where GLINOGA, GONZALEZ and NEELY earned enough to  
22          meet minimum wage for 40 hours of work in a week, they were not paid time and  
23          half for hours worked in excess of 40 hours in a week (i.e., over time pay of time  
24          and half).

25          59. Since March 1, 2019, in waiting for and providing rides for UBER  
26          customers while using UBER’s application (as they cannot solicit UBER customers  
27          without UBER’s permission under the terms and conditions imposed by UBER  
28          without this application) GLINOGA, GONZALEZ and NEELY used their own

1 phone, paid for the cell phone service necessary to access UBER's application,  
2 drove their own car to carry out their duties as a UBER ride share driver in waiting  
3 for, picking up and driving UBER customers to their requested locations, and paid  
4 for gas and maintenance of their respective cars used in carrying out their duties and  
5 obligations for UBER. Since March 1, 2019, the foregoing activities' costs in  
6 carrying out their ride-share/transportation function on UBER's behalf were borne  
7 respectively by GLINOGA, GONZALEZ and NEELY, none of which has been  
8 reimbursed by UBER to date.

9 **CLASS ACTION ALLEGATIONS**

10 60. Plaintiffs bring this action on behalf of themselves and all others  
11 similarly situated as a Class Action pursuant to FRCP Rule 23. Plaintiffs seek to  
12 represent a class composed of and defined as follows: "All persons who worked as  
13 ride-share drivers for UBER (hereinafter referred to as "Ride-share drivers"), from  
14 March 1, 2019 to the present, who opted out of both the 2015 and 2019 arbitration  
15 provisions.

16 61. Excluded from the class and class claims is any UBER employee or  
17 worker that did not work as a ride-share driver, as well as those that did not opt out  
18 of either the 2015 or 2019 arbitration agreements. Excluded from the class include  
19 all named plaintiffs herein (Non-Representative Plaintiffs) but not Plaintiffs  
20 GLINOGA, GONZALEZ and NEELY.

21 62. This action has been brought and may properly be maintained as a  
22 Class Action under FRCP 23 because there is a well-defined community of interest  
23 in the litigation and the proposed Class is easily ascertainable.

24 **A. Numerosity**

25 63. The potential members of the Class as defined are so numerous or  
26 many that joinder of all the members of the Class is impracticable. While the  
27 precise number of Class Members has not been determined at this time, Plaintiffs  
28 are informed and believe, and on that basis allege, that UBER currently employs,

1 and during the relevant time periods employed, over 50,000 Ride-share drivers.

2 **B. Commonality**

3 64. There are questions of law and fact common to the Class that  
 4 predominate over any questions affecting only individual Class Members. These  
 5 common questions of law and fact include, without limitation and subject to  
 6 possible further amendment:

- 7 (a) Whether UBER intentionally misclassified the Class as  
     independent contractors after April 2018, in violation of  
     Labor Code § 226.8 and *Dynamex*;
- 8 (b) Whether Defendants' policy or practice of not paying  
     Plaintiffs overtime compensation for the hours they  
     worked over 40 in a workweek or eight hours in a day is  
     illegal under Labor Code §§ 510, 1194, and Wage Order  
     No. 4-2001 § 3(A);
- 9 (c) Whether Defendants' policy or practice of not paying ride-  
     share drivers all their wages due in their final paychecks  
     immediately upon involuntary termination or when 72  
     hours' notice was provided before voluntary resignation,  
     is unlawful under Labor Code §§ 201, 202 and/or 203;
- 10 (d) Whether Defendants' policy or practice of not paying ride-  
     share drivers of at least minimum wage is a violation of  
     Labor Code §§ 1194 and 1197;
- 11 (e) Whether Plaintiffs and the members of the Class are  
     entitled to equitable relief pursuant to Business &  
     Professions Code §§ 17200, et seq;
- 12 (f) Whether Defendants violated Labor Code §§ 226 by not  
     providing accurate pay stubs;
- 13 (g) Whether Defendants violated California law including but

not limited to California Industrial Welfare Commission (“IWC”) Wage Order Nos. 4-2001, 4-2000, and 4-1998 by not keeping accurate time records;

(h) Whether Plaintiffs and/or the Class Members are entitled to injunctive relief;

(i) The nature and extent of class-wide injury and the measure of damages, restitution penalties, or other monetary relief owed; and

(j) Whether Defendants violated the Unfair Business Practices Act (Bus. & Prof. § 17200) by violating the laws alleged to have been violated in this Complaint.

### C. Typicality

65. Plaintiffs' and all other Class Members' claims are typical of the claims of the Class. Plaintiffs and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct and policies in violation of laws, regulations that have the force and effect of law and statutes as alleged herein. Plaintiffs' and all other Class Members' claims are thereby representative of and co-extensive with the claims of the class. Plaintiffs' and all other Class Members' claims are typical of the claims of the members of the Class because they were hourly-paid employees who, like the other members of the Class, sustained damages and losses arising out of the Defendants' unlawful conduct, which includes, but is not limited to, the following: repeatedly failing to pay – or indeed ever pay – hours reported worked; failing to provide accurate wage statements; failing to pay bi-monthly in a timely manner; failing to pay Plaintiffs and Class Members all wages due immediately upon involuntary termination; and failing to include all wages in said final paychecks.

#### D. Adequacy of Representation

66. Plaintiffs are members of the Class, do not have any conflicts of

1 interest with other Class Members, and will prosecute the case vigorously on behalf  
2 of the Class. Counsel representing Plaintiffs are competent and experienced in  
3 litigating large employment class actions, including wage and overtime class  
4 actions. Plaintiffs will fairly and adequately represent and protect the interests of  
5 the Class Members.

6 **E. Superiority of Class Action**

7 67. A class action is superior to other available means for the fair and  
8 efficient adjudication of this controversy; especially whether Class Members are  
9 misclassified as independent contractors under Labor Code § 2750.3's ABC  
10 test. Individual joinder of all Class Members is not practicable, and questions of  
11 law and fact common to the Class predominate over any questions affecting only  
12 individual members of the Class. Each Class Member has been damaged or  
13 suffered injury and is entitled to recovery by reason of Defendants' illegal policies  
14 and/or practices including but not limited to failing to pay – or indeed ever pay --  
15 overtime compensation to its employees; failing to pay minimum wage; failing to  
16 provide accurate wage statements; and failing to pay Plaintiffs and Class Members  
17 all wages due immediately upon involuntary termination, within 72 hours of  
18 voluntary resignation, paying said final wages at the place of employment, and  
19 including all wages in said final paychecks. Class Action treatment will allow those  
20 similarly situated persons to litigate their claims in the manner that is most efficient  
21 and economical for the parties and the judicial system.

22 68. Class Action treatment will allow those similarly situated persons to  
23 litigate their claims in the manner that is most efficient and economical for the  
24 parties and the judicial system. Plaintiffs are unaware of any difficulties that are  
25 likely to be encountered in the management of this action that would preclude  
26 maintenance as a Class Action.

27 69. Plaintiffs bring this action on behalf of themselves and on behalf of  
28 others similarly situated current employees and former employees, including but

1 not limited to all individuals “contracted,” but legally employed, as “Ride-share  
 2 drivers,” pursuant to Code of Civil Procedure § 382 and as Class Claims. The Class  
 3 of employees that Plaintiffs seek to represent includes all individuals employed as  
 4 a “Ride-share drivers”:

- 5                     (a) Who were misclassified as independent contractors;
- 6                     (b) Who did not receive overtime compensation; and/or
- 7                     (c) Who did not receive minimum wages; and/or
- 8                     (d) Who did not receive payment of wages on a timely, bi-  
                        monthly manner; and/or
- 9                     (e) Who did not receive accurate wage statements; and/or
- 10                   (f) Who were not timely paid all wages owed upon  
                        involuntary termination, or within 72 hours of voluntary  
                        resignation, at the place of employment.

14 For the reasons alleged in this Complaint, this action should be certified as  
 15 a Class Action.

16                     **FIRST CAUSE OF ACTION**

17                     **(Individual and Representative Claim for  
                        Failure to Pay Timely Earned Wages During Employment and  
                        Upon Separation of Employment in Violation of  
                        California Labor Code §§ 201, 202, 203, 204, 218.5, and 218.6)  
                        (GLINOGA, GONZALEZ and NEELY Against All Defendants)**

22                   70. Plaintiffs re-allege and incorporate by reference the foregoing  
 23 allegations as though set forth herein.

24                   71. Pursuant to Labor Code § 201, “if an employer discharges an  
 25 employee, the wages earned and unpaid at the time of discharge are due and  
 26 payable immediately.”

27                   72. Pursuant to Labor Code § 202, “if an employee not having a written  
 28 contract for a definite period quits his or her employment, his or her wages shall

1 become due and payable not later than 72 hours thereafter, unless the employee  
 2 has given 72 hours previous notice of his or her intention to quit, in which case the  
 3 employee is entitled to his or her wages at the time of quitting.”

4       73. Labor Code § 203 provides, in pertinent part: “If an employer willfully  
 5 fails to pay, without abatement or reduction, ... any wages of an employee who is  
 6 discharged or who quits, the wages of the employee shall continue as a penalty  
 7 from the due date thereof at the same rate until paid or until an action therefore is  
 8 commenced; but the wages shall not continue for more than 30 days. ...”

9       74. Pursuant to Labor Code § 204, “all wages ... earned by any person in  
 10 any employment are due and payable twice during each calendar month, on days  
 11 designated in advance by the employer as the regular paydays.”

12       75. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought  
 13 for the nonpayment of wages and fringe benefits.

14       76. Plaintiffs and Class Members were not properly paid pursuant to the  
 15 requirements of Labor Code §§ 201, 202, and 204 and thereby seek the unpaid  
 16 wages. To date, for example, Defendants have not paid Plaintiffs all earned wages.

17       77. Since March 1, 2019, Plaintiffs GLINOGA, GONZALES, NEELY,  
 18 began working as UBER drivers by use of the UBER application, use of their own  
 19 car, and with the use of their own money for maintenance of the vehicle and phone  
 20 used to carry out their duties for UBER.

21       78. Specifically, GLINOGA, GONZALEZ, and NEELY have used  
 22 Defendant UBER’s application since March 1, 2019 to provide the transportation  
 23 service to UBER customers by turning on UBER’s driver app and set the settings  
 24 so that they can see and accept UBER customer requests for a ride through the  
 25 UBER application.

26       79. In this manner, since March 1, 2019, GLINOGA, GONZALEZ, and  
 27 NEELY have had the application set to “on,” waiting for an UBER customer request  
 28 for long periods of time; often times spending more time waiting for a ride request

1 than driving a customer resulting in the compensation for said ride or rides over the  
 2 course of a week to come out to less than minimum wage per hour.

3       80. Also, since March 1, 2019, GLINOGA, GONZALEZ, and NEELY  
 4 regularly had the UBER application on, waiting for and providing for UBER  
 5 customers for over 8 hours a day, after having done this function 40 hours in a week.  
 6 In the instances where GLINOGA, GONZALEZ, and NEELY earned enough to  
 7 meet minimum wage for 40 hours of work in a week, they were not paid time and  
 8 half for hours worked in excess of 40 hours in a week (i.e., over time pay of time  
 9 and half).

10      81. Plaintiff GLINOGA, GONZALEZ, and NEELY stopped working for  
 11 UBER in approximately March of 2020. Accordingly, Plaintiffs employment  
 12 relationships with UBER ended in or about March of 2020.

13      82. Plaintiffs and Class Members are informed and believe and based  
 14 thereon allege that Defendants willfully failed to pay Plaintiffs' wages in the form  
 15 of minimum wage and overtime pay pursuant to the requirements of Labor Code  
 16 §§ 201, 202, and 204, after Plaintiffs' demand, and therefore Plaintiffs are entitled  
 17 the associated unpaid wages and waiting time penalties. Plaintiffs are informed and  
 18 believe and based thereon allege that Defendants did this with the intent to secure  
 19 for themselves a discount on their indebtedness and/or with intent to annoy harass,  
 20 oppress, hinder, delay and/or defraud Plaintiffs.

21      83. Plaintiffs and Class Members have been deprived of their rightfully  
 22 earned wages as a direct and proximate result of Defendants' failure and refusal to  
 23 pay said compensation and for the reasons alleged in this Complaint.

24      84. Plaintiffs and Class Members request the unpaid wages, waiting time  
 25 penalties, interest, attorneys' fees, costs, damages, and other remedies in an amount  
 26 to be proven at trial.

27      85. Non-Representative Plaintiffs will be enforcing any of their respective  
 28 individual rights and remedies for Defendant's violation of California Labor Code

§§ 201, 202, 203, 204, 218.5, and 218.6 through arbitration.

## **SECOND CAUSE OF ACTION**

**(Individual and Representative Claim for  
Failure to Pay Minimum Wages in Violation of  
California Labor Code §§ 1182.12, 1194,  
1194.2, 1197, and Wage Order No. 4-2001 § 3(A)**

**(GLINOGA, GONZALEZ and NEELY Against All Defendants)**

86. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

87. Pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197, it is unlawful for a California employer to suffer or permit an employee to work without paying wages for all hours worked, as required by the applicable Industrial Welfare Commission (“IWC”) Wage Order.

88. During all times relevant, IWC Wage Order No. 4-2001, governing the “Professional, Technical, Clerical, Mechanical and Similar Occupations” industry, applied to Plaintiffs and the Class members’ employment with Defendants.

89. Pursuant to Wage Order 4, section 2(K), “hours worked” include the time during which an employee is “suffered or permitted to work, whether or not required to do so.”

90. IWC Wage Order No. 4-2001, § 4 (A), requires every employer to pay each employee minimum wages not less than \$11.00 per hour effective January 1, 2018, \$12.00 per hour effective January 1, 2019, and \$13.00 per hour effective January 1, 2019 to the present time.

91. During all times relevant, Class Members including Plaintiffs have not been paid minimum wages for all hours suffered or permitted to work in violation of the minimum wage provisions of California Labor Code §§ 1182.12, 1194, 1194.2, and 1197, and IWC Wage Order No. 4-2001, § 4 (A).

1       92. Since March 1, 2019, Plaintiffs GLINOGA, GONZALES, and  
 2 NEELY began working as UBER drivers by use of the UBER application, use of  
 3 their own car, and with the use of their own money for maintenance of the vehicle  
 4 and phone used to carry out their duties for UBER.

5       93. Specifically, GLINOGA, GONZALEZ, and NEELY have used  
 6 Defendant UBER's application since March 1, 2019 to provide the transportation  
 7 service to UBER customers by turning on UBER's driver app and set the settings  
 8 so that they can see and accept UBER customer requests for a ride through the  
 9 UBER application.

10      94. In this manner, since March 1, 2019, GLINOGA, GONZALEZ, and  
 11 NEELY have had the application set to "on," waiting for an UBER customer request  
 12 for long periods of time; often times spending more time waiting for a ride request  
 13 than driving a customer resulting in the compensation for said ride or rides over the  
 14 course of a week to come out to less than minimum wage per hour.

15                  ***Failure to Compensate for Time Waiting for Ride Notifications on  
 16 Uber's App Has Led to Failure to Account for Hours Worked Which Led to a  
 17 Failure to Pay Minimum Wage***

18       95. Specifically, Plaintiffs GLINOGA, GONZALES, and NEELY have  
 19 been driving for Defendants prior to March 1, 2019 continuing up to and until  
 20 approximately March of 2020. During the entirety of his employment, Plaintiff  
 21 GLINOGA worked approximately 60 hours per week on average but was only paid  
 22 by Defendants for approximately 30 of those hours on average. During the entirety  
 23 of his employment, Plaintiff GONZALES worked approximately 50 to 60 hours per  
 24 week but was only paid by Defendants for approximately 40 to 42 of those hours  
 25 on average. During the entirety of his employment, Plaintiff NEELY worked  
 26 approximately 55 hours per week but was only paid by Defendants for  
 27 approximately 25 of those hours on average. As such, Plaintiffs GLINOGA,  
 28 GONZALES, and NEELY were not earning minimum wage. Defendants engaged

1 in this practice throughout the three-year statute of limitations that applies to this  
2 action pursuant to 29 U.S.C. § 255.

3       96. Specifically, Plaintiff GLINOGA worked approximately seven days a  
4 week while employed by UBER. From Monday through Thursday, Plaintiff  
5 GLINOGA regularly worked from 5:00 p.m. to 12:00 a.m., for a total of  
6 approximately seven hours a day. If Plaintiff GLINOGA did not have to report to  
7 his day job, he would work on Mondays through Thursdays from approximately  
8 6:00 a.m. to 12:00 p.m., then again from 2:00 pm to 12:00 am, for a total of sixteen  
9 hours, with a two-hour break in between. On Fridays, Plaintiff GLINOGA regularly  
10 worked from approximately 5:00 p.m. to 2:00 a.m., for a total of approximately nine  
11 hours. On Saturdays and Sundays, Plaintiff regularly worked from approximately  
12 10:00 a.m. to 4:00 p.m., then again from 5:00 p.m. to 2:00 a.m., for a total of 15  
13 hours, with a one-hour break in between. During these times, Plaintiff GLINOGA  
14 had his UBER application set to “on” while he was either transporting passengers,  
15 or waiting for his next customer to request a ride. Plaintiff GLINOGA turned his  
16 Uber application “on” at the start of his day, and left the app on the entire time, with  
17 the exception of his one or two-hour breaks. During the entirety of his employment  
18 with UBER, Plaintiff GLINOGA earned approximately \$700.00 per week, for  
19 working a total of approximately 67 hours a week on average. Accordingly,  
20 Plaintiff GLINOGA was earning approximately \$10.44 per hour while employed  
21 by UBER. Often times, a third or more of Plaintiff GLINOGA’s earnings were used  
22 to pay for gas for his vehicle.

23       97. Moreover, Plaintiff NEELY consistently worked six days a week while  
24 employed by UBER. From Monday through Friday, Plaintiff NEELY regularly left  
25 his house, got in his car, and turned the UBER application “on” at approximately  
26 7:00 a.m. Plaintiff NEELY left the application “on” all day, while he was either  
27 transporting passengers, or waiting for his next customer to request a ride. From  
28 Monday through Friday, Plaintiff NEELY regularly turned the UBER application

off for approximately one hour around 11:30 a.m. or 12:00 p.m. noon, in order to eat something and rest. On Mondays through Fridays, at approximately 5:00 to 6:00 p.m., Plaintiff NEELY would set his Uber application to a “destination” filter, which allowed the application to find him rides that were heading towards his home. Plaintiff NEELY generally turned his UBER application off and got home at approximately 6:30 p.m. on Monday through Friday, after working approximately ten hours total per day. On Saturdays, Plaintiff NEELY worked approximately five to six hours total, either in the morning or in the afternoon, with his UBER application set to “on” the entire time, with no breaks in between. Plaintiff NEELY did not work on Sundays. During the entirety of his employment with UBER, Plaintiff NEELY earned approximately \$85.00 to \$120.00 per day, while working at least ten hours a day. Accordingly, Plaintiff NEELY was earning approximately \$8.50 per hour (less than minimum wage) while employed by UBER.

98. Moreover, Plaintiff GONZALES worked 7 days a week while employed by UBER. From Monday through Thursday, Plaintiff GONZALES regularly left his house, got in his car, and turned the UBER application “on” at approximately 5:00 a.m. to 10:00 a.m. On Friday through Sunday, Plaintiff GONZALES left the application “on” from 3:00 pm to 3:00pm, with rare breaks during slower times. Plaintiff GONZALES typically worked 40-50 hours a week, and about 15 times a year would work 50-60 a week. During the entirety of his employment with UBER, Plaintiff NEELY earned approximately \$85.00 to \$120.00 per day, while working at least ten hours a day. Accordingly, Plaintiff NEELY was earning approximately \$8.50 (less than minimum wage) per hour while employed by UBER.

## Specific Workweeks of Plaintiff GONZALEZ:

- July 15 to 22, 2019 he totaled 54h 24m “online” / 38h 53m “active”
  - Oct 21 to 28, 2019 he totaled 44h 10m “online” / 37h 13m “active”
  - Dec 2 to 9, 2019 he totaled 50h 7m “online” / 35h 42m “active”

1                   • Jan 20 to 27, 2020 he totaled 66h 4m “online” / 39h 15m “active”

2         99. These differential demonstrate how Plaintiff GONZALEZ waiting  
 3 hours in a work week for which they were not compensated as “waiting time,” thus  
 4 leading to a failure to be paid minimum wage, as well as failure to pay at an  
 5 overtime rate for applicable hours worked over 40 in a work week

6         100. The times in which Plaintiffs had their application set to “on,”  
 7 Plaintiffs were either waiting for a ride request, driving to or from a customer pick  
 8 up or drop off location, or driving a customer. These hours worked are  
 9 compensable since Plaintiffs were suffered or permitted to work during these times,  
 10 whether or not required to do so. Plaintiffs were suffered or permitted to work up  
 11 to twelve (12) hours a day. Once a driver reached twelve (12) hours, the UBER  
 12 application would not allow them to continue working additional hours for at least  
 13 the next eight (8) consecutive hours.

14         101. Specifically, Plaintiff GLINOGA worked approximately seven days a  
 15 week while employed by UBER. From Monday through Thursday, Plaintiff  
 16 GLINOGA regularly worked from 5:00 p.m. to 12:00 a.m., for a total of  
 17 approximately seven hours a day. If Plaintiff GLINOGA did not have to report to  
 18 his day job, he would work on Mondays through Thursdays from approximately  
 19 6:00 a.m. to 12:00 p.m., then again from 2:00 pm to 12:00 am, for a total of sixteen  
 20 hours, with a two-hour break in between. On Fridays, Plaintiff GLINOGA  
 21 regularly worked from approximately 5:00 p.m. to 2:00 a.m., for a total of  
 22 approximately nine hours. On Saturdays and Sundays, Plaintiff regularly worked  
 23 from approximately 10:00 a.m. to 4:00 p.m., then again from 5:00 p.m. to 2:00  
 24 a.m., for a total of 15 hours, with a one-hour break in between. During these times,  
 25 Plaintiff GLINOGA had his UBER application set to “on” while he was either  
 26 transporting passengers, or waiting for his next customer to request a ride. Plaintiff  
 27 GLINOGA turned his Uber application “on” at the start of his day, and left the app  
 28 on the entire time, with the exception of his one or two-hour breaks. During the

1 entirety of his employment with UBER, Plaintiff GLINOGA earned approximately  
2 \$700.00 per week, for working a total of approximately 67 hours a week on  
3 average. Accordingly, Plaintiff GLINOGA was earning approximately \$10.44 per  
4 hour while employed by UBER. Often times, a third or more of Plaintiff  
5 GLINOGA's earnings were used to pay for gas for his vehicle.

6 102. Moreover, Plaintiff NEELY consistently worked six days a week while  
7 employed by UBER. From Monday through Friday, Plaintiff NEELY regularly  
8 left his house, got in his car, and turned the UBER application "on" at  
9 approximately 7:00 a.m. Plaintiff NEELY left the application "on" all day, while  
10 he was either transporting passengers, or waiting for his next customer to request  
11 a ride. From Monday through Friday, Plaintiff NEELY regularly turned the UBER  
12 application off for approximately one hour around 11:30 a.m. or 12:00 p.m. noon,  
13 in order to eat something and rest. On Mondays through Fridays, at approximately  
14 5:00 to 6:00 p.m., Plaintiff NEELY would set his Uber application to a  
15 "destination" filter, which allowed the application to find him rides that were  
16 heading towards his home. Plaintiff NEELY generally turned his UBER  
17 application off and got home at approximately 6:30 p.m. on Monday through  
18 Friday, after working approximately ten hours total per day. On Saturdays,  
19 Plaintiff NEELY worked approximately five to six hours total, either in the  
20 morning or in the afternoon, with his UBER application set to "on" the entire time,  
21 with no breaks in between. Plaintiff NEELY did not work on Sundays. During the  
22 entirety of his employment with UBER, Plaintiff NEELY earned approximately  
23 \$85.00 to \$120.00 per day, while working at least ten hours a day. Accordingly,  
24 Plaintiff NEELY was earning approximately \$8.50 to \$12.00 per hour while  
25 employed by UBER.

26 103. Labor Code § 1194.2, subdivision (a) provides that, in an action to  
27 recover wages because of the payment of a wage less than the minimum wage fixed  
28 by IWC Wage Orders, an employee is entitled to recover liquidated damages in an

1 amount equal to the wages unlawfully unpaid and interest thereon.

2 104. Class Members, including Plaintiffs, should have received minimum  
3 wages in a sum according to proof during all times relevant to this action.

4 105. Defendants have intentionally failed and refused, and continue to fail  
5 and refuse, to pay Class Members, including Plaintiffs, minimum wages for all  
6 time suffered or permitted to work.

7 106. Plaintiffs, on behalf of themselves and the Class, request the recovery of  
8 the unpaid minimum wages, waiting time penalties, liquidated damages, interest,  
9 attorneys' fees, and costs in an amount to be determined at trial.

10 107. Non-Representative Plaintiffs will be enforcing any of their respective  
11 individual rights and remedies for Defendant's violation of California Labor Code  
12 §§ 1182.12, 1194, 1194.2, 1197, and Wage Order No. 4-2001 § 3(A) through  
13 arbitration.

14

**THIRD CAUSE OF ACTION**

15

**(Individual and Representative Claim for**

16

**Penalties for Violations of California Labor Code § 226 for**

17

**Failure to Provide Accurate Wage Statements)**

18

**(GLINOGA, GONZALEZ, and NEELY Against All Defendants)**

19 108. Plaintiffs re-allege and incorporate by reference the foregoing  
20 allegations as though set forth herein.

21 109. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in  
22 pertinent part, that "Every employer shall, semimonthly or at the time of each  
23 payment of wages, furnish each of his or her employees, either as a detachable part  
24 of the check, draft, or voucher paying the employee's wages, or separately when  
25 wages are paid by personal check or cash, an accurate itemized statement in writing  
26 showing: (1) gross wages earned; (2) total hours worked by the employee, except  
27 for any employee whose compensation is solely based on a salary and who is

1 exempt from payment of overtime under subdivision (a) of § 515 or any applicable  
2 order of the Industrial Welfare Commission; (3) the number of piece-rate units  
3 earned and any applicable piece rate if the employee is paid on a piece-rate basis;  
4 (4) all deductions, provided that all deductions made on written orders of the  
5 employee may be aggregated and shown as one item; (5) net wages earned; (6) the  
6 inclusive dates of the period for which the employee is paid; (7) the name of the  
7 employee and his or her social security number, except that by January 1, 2008,  
8 only the last four digits of his or her social security number or an employee  
9 identification number other than a social security number may be shown on the  
10 itemized statement; (8) the name and address of the legal entity that is the  
11 employer; and (9) all applicable hourly rates in effect during the pay period and the  
12 corresponding number of hours worked at each hourly rate by the employee. . .”  
13 (Labor Code § 226 subdivision (a)).

14       110. Upon information and belief, during all times relevant to this action,  
15 debt collectors, including Plaintiffs, never received any wage statement at all, let  
16 alone a wage statement with all required information set forth under Labor Code §  
17 226 from Defendants, and Plaintiffs suffered damages from not receiving wage  
18 statements.

19       111. Plaintiffs allege that, on numerous occasions, an exact amount by which  
20 will be proven at trial, Defendants violated various provisions of § 226, including  
21 but not limited to subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), and  
22 (a)(9) by failing to provide Plaintiffs accurate itemized statement in writing  
23 showing: (1) gross wages earned; (2) total hours worked by the employee; (3) all  
24 deductions; (4) net wages earned; (5) the inclusive dates of the period for which  
25 the employee is paid; (6) the name of the employee; (7) the name and address of  
26 the legal entity that is the employer; and (8) all applicable hourly rates in effect  
27 during the pay period and the corresponding number of hours worked at each  
28 hourly rate by the employee.

1       112. Specifically, Plaintiffs GLINOGA, GONZALES, and NEELY have  
 2 been driving for Defendants prior to March 1, 2019 continuing up to and until  
 3 approximately March of 2020. Plaintiffs employment with UBER ended in or  
 4 about March of 2020. To date, Plaintiffs GLINOGA, GONZALES, and NEELY  
 5 have not once received any wage statement whatsoever, let alone a wage statement  
 6 with all required information set forth under Labor Code § 226.

7       113. Ubers failure to provide wage statements consistent with Labor Code §  
 8 226's requirements was willful and intentional after it became on notice in April  
 9 2018 when the ABC test first was establish through Dynamex. At the very least,  
 10 Uber was on notice that Plaintiffs and Class Members were employees under Labor  
 11 Code § 2750.3 (a.k.a., "AB5") in September 2019 through the enactment of Prop  
 12 22. After an employer has learned its conduct violates the Labor Code, the  
 13 employer is on notice that any future violations will be punished just the same as  
 14 violations that are willful or intentional, i.e., they will be punished at twice the rate  
 15 of penalties that could have been imposed or that were imposed for the initial  
 16 violation. (*Patel v. Nike Retail Services, Inc.* (N.D.Cal.2014) 58 F.Supp.3d 1032.)

17       114. For Defendants' misconduct as alleged in this Complaint, Plaintiffs  
 18 seek damages, penalties, costs and attorneys' fees pursuant to Labor Code § 226  
 19 subdivision (e) in an amount to be proven at trial.

20       115. For Defendants' misconduct as alleged herein, Plaintiffs seek injunctive  
 21 relief and attorneys' fees and costs pursuant to § 226 subdivision (g) in an amount  
 22 to be proven at trial.

23       116. Non-Representative Plaintiffs will be enforcing any of their respective  
 24 individual rights and remedies for Defendant's violation of California Labor Code  
 25 § 226 through arbitration.

26       //

27       //

28       //

**FOURTH CAUSE OF ACTION****(Individual and Representative Claim****Failure to Pay Required Minimum Wages in Violation of  
Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 206)****(GLINOGA, GONZALEZ, and NEELY Against All Defendants)**

117. Plaintiffs re-allege and incorporate by reference the foregoing  
allegations as though set forth herein.

118. At all times relevant, Defendants have willfully and intentionally failed  
to pay Plaintiffs and Class Members minimum wage as required by 29 U.S.C. §  
206.

***Standby/On-Call Time Is Compensable Under Federal and State Law***

119. California’s Wage Order No. 4 of the Industrial Welfare Commission  
defines “hours worked” as “the time during which an employee is subject to the  
control of an employer, and includes all the time the employee is suffered or  
permitted to work, whether or not required to do so.” (IWC Wage Order No. 4-  
2001, sec. 2, subsec. (k).) Under California law, on-call waiting time is  
compensable if it is spent primarily for the benefit of the employer and its business.

120. (Gomez v. Lincare, Inc. (2009) 173 Cal. App. 4th 508, 522 (adopting test set forth in  
Owens v. Local No. 169, Ass’n of Western Pulp & Paper Workers (9th Cir. 1992) 971 F.  
2d 347); *Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132; *Skidmore v. Swift &*

21 Co. (1944) 323 U.S. 134.) “Whether time is spent predominantly for the employer’s  
22 benefit or for the employee’s is a question dependent upon all the circumstances of  
23 the case.” (*Armour* at 133.). The relevant factual inquiry is whether an employee  
24 is “engaged to wait” or waiting to be engaged. (*Skidmore*, at 133.)

25 120. There can be no dispute that for Plaintiffs and Class Members to  
26 provide the service of an Uber ride for an Uber customer, they must use Uber’s  
27 application to be connected with that Uber customer. In other words, a driver is  
28 ignorant of an Uber customer’s need for a ride without use of Uber’s application.

1 Ergo, Plaintiff and Class members are controlled by Uber (the employer), through  
 2 Uber's application, because Uber permits (at its discretion and without any  
 3 transparency) how and when the Plaintiffs and Class Members are notified of an  
 4 Uber customer's solicitation of a ride through Uber's digital platform.

5       121. Without use of Uber's application for notification of an Uber  
 6 customer's request for a ride, and waiting for Uber to notify Plaintiff and Class  
 7 Members of a customer's request for a ride, Plaintiff and Class Members cannot  
 8 connect with a customer which in turn prevents the customer and the driver from  
 9 ever connecting. In fact, Uber incentivizes Plaintiffs and Class Members to wait  
 10 for a rider notification with surge pricing during events that Uber anticipates will  
 11 lead to high demand for Uber rides; e.g., high density of bars, nightclubs, concerts,  
 12 sporting events etc.

13       122. Waiting on Uber's application for a ride notification is the *only* method  
 14 Plaintiff and Class Members can ever learn an opportunity to provide a ride to an  
 15 Uber customer. The Uber ride, where driver and customer meet, cannot be  
 16 effectuated without their participation in Uber's exclusive digital platform a.k.a.,  
 17 the Uber app. Under this practical and indisputable reality, Plaintiff and Class  
 18 Members are "engaged to wait" on Uber's application for Uber to notify them of a  
 19 customer's ride request, in order to provide the Uber customer the benefit of the  
 20 service provided by Uber – a car ride, at a predetermined estimated price, with an  
 21 estimated time of pickup, and estimated time of arrival, that can be paid by anyone,  
 22 that can be shared with anyone, and all made possible through (exclusive) use of  
 23 Uber's app.

24       123. Moreover, Plaintiffs' and Class Members' time spent waiting on the  
 25 application for a rider notification is for the benefit of Uber, as Uber charges the  
 26 customer for rides Plaintiffs and Class Members are waiting on the Uber app to be  
 27 notified of.

28       124. Because this waiting time (a.k.a., standby time) on Uber's application

1 is inextricably intertwined Plaintiffs'/Class Members' ability to provide a ride (or  
2 customers to solicit a ride) that benefits and is controlled by Uber, the time waiting  
3 on the app is for the benefit of Uber, and should be compensated as "hours worked"  
4 under California and federal law.

5                   ***Failure to Compensate for Time Waiting for Ride Notifications on***  
6                   ***Uber's App Has Led to Failure to Account for Hours Worked Which Led to a***  
7                   ***Failure to Pay Minimum Wage***

8                   125. Specifically, Plaintiffs GLINOGA, GONZALES, and NEELY have  
9 been driving for Defendants prior to March 1, 2019 continuing up to and until  
10 approximately March of 2020. During the entirety of his employment, Plaintiff  
11 GLINOGA worked approximately 60 hours per week on average but was only paid  
12 by Defendants for approximately 30 of those hours on average. During the entirety  
13 of his employment, Plaintiff GONZALES worked approximately 50 to 60 hours  
14 per week but was only paid by Defendants for approximately 40 to 42 of those  
15 hours on average. During the entirety of his employment, Plaintiff NEELY worked  
16 approximately 55 hours per week but was only paid by Defendants for  
17 approximately 25 of those hours on average. As such, Plaintiffs GLINOGA,  
18 GONZALES, and NEELY were not earning minimum wage. Defendants engaged  
19 in this practice throughout the three-year statute of limitations that applies to this  
20 action pursuant to 29 U.S.C. § 255.

21                   126. Specifically, Plaintiff GLINOGA worked approximately seven days a  
22 week while employed by UBER. From Monday through Thursday, Plaintiff  
23 GLINOGA regularly worked from 5:00 p.m. to 12:00 a.m., for a total of  
24 approximately seven hours a day. If Plaintiff GLINOGA did not have to report to  
25 his day job, he would work on Mondays through Thursdays from approximately  
26 6:00 a.m. to 12:00 p.m., then again from 2:00 pm to 12:00 am, for a total of sixteen  
27 hours, with a two-hour break in between. On Fridays, Plaintiff GLINOGA  
28 regularly worked from approximately 5:00 p.m. to 2:00 a.m., for a total of

1 approximately nine hours. On Saturdays and Sundays, Plaintiff regularly worked  
2 from approximately 10:00 a.m. to 4:00 p.m., then again from 5:00 p.m. to 2:00  
3 a.m., for a total of 15 hours, with a one-hour break in between. During these times,  
4 Plaintiff GLINOGA had his UBER application set to “on” while he was either  
5 transporting passengers, or waiting for his next customer to request a ride. Plaintiff  
6 GLINOGA turned his Uber application “on” at the start of his day, and left the app  
7 on the entire time, with the exception of his one or two-hour breaks. During the  
8 entirety of his employment with UBER, Plaintiff GLINOGA earned approximately  
9 \$700.00 per week, for working a total of approximately 67 hours a week on  
10 average. Accordingly, Plaintiff GLINOGA was earning approximately \$10.44 per  
11 hour while employed by UBER. Often times, a third or more of Plaintiff  
12 GLINOGA’s earnings were used to pay for gas for his vehicle.

13 127. Moreover, Plaintiff NEELY consistently worked six days a week while  
14 employed by UBER. From Monday through Friday, Plaintiff NEELY regularly  
15 left his house, got in his car, and turned the UBER application “on” at  
16 approximately 7:00 a.m. Plaintiff NEELY left the application “on” all day, while  
17 he was either transporting passengers, or waiting for his next customer to request  
18 a ride. From Monday through Friday, Plaintiff NEELY regularly turned the UBER  
19 application off for approximately one hour around 11:30 a.m. or 12:00 p.m. noon,  
20 in order to eat something and rest. On Mondays through Fridays, at approximately  
21 5:00 to 6:00 p.m., Plaintiff NEELY would set his Uber application to a  
22 “destination” filter, which allowed the application to find him rides that were  
23 heading towards his home. Plaintiff NEELY generally turned his UBER  
24 application off and got home at approximately 6:30 p.m. on Monday through  
25 Friday, after working approximately ten hours total per day. On Saturdays,  
26 Plaintiff NEELY worked approximately five to six hours total, either in the  
27 morning or in the afternoon, with his UBER application set to “on” the entire time,  
28 with no breaks in between. Plaintiff NEELY did not work on Sundays. During the

1 entirety of his employment with UBER, Plaintiff NEELY earned approximately  
 2 \$85.00 to \$120.00 per day, while working at least ten hours a day. Accordingly,  
 3 Plaintiff NEELY was earning approximately \$8.50 per hour (less than minimum  
 4 wage) while employed by UBER.

5 128. Moreover, Plaintiff GONZALES worked 7 days a week while  
 6 employed by UBER. From Monday through Thursday, Plaintiff GONZALES  
 7 regularly left his house, got in his car, and turned the UBER application “on” at  
 8 approximately 5:00 a.m. to 10:00 a.m. On Friday through Sunday, Plaintiff  
 9 GONZALES left the application “on” from 3:00 pm to 3:00pm, with rare breaks  
 10 during slower times. Plaintiff GONZALES typically worked 40-50 hours a week,  
 11 and about 15 times a year would work 50-60 a week. During the entirety of his  
 12 employment with UBER, Plaintiff NEELY earned approximately \$85.00 to  
 13 \$120.00 per day, while working at least ten hours a day. Accordingly, Plaintiff  
 14 NEELY was earning approximately \$8.50 (less than minimum wage) per hour  
 15 while employed by UBER.

16 129. Specific Workweeks of Plaintiff GONZALEZ:

17 130. • July 15 to 22, 2019 he totaled 54h 24m “online” / 38h 53m “active”

18 131. • Oct 21 to 28, 2019 he totaled 44h 10m “online” / 37h 13m “active”

19 132. • Dec 2 to 9, 2019 he totaled 50h 7m “online” / 35h 42m “active”

20 133. • Jan 20 to 27, 2020 he totaled 66h 4m “online” / 39h 15m “active”

21 134. These differential demonstrate how Plaintiff GONZALEZ waiting  
 22 hours in a work week for which they were not compensated as “waiting time,” thus  
 23 leading to a failure to be paid minimum wage, as well as failure to pay at an  
 24 overtime rate for applicable hours worked over 40 in a work week.

25 135. Therefore, at all times relevant, Defendants operated under and  
 26 continue to operate under a common policy and plan of willfully, regularly, and  
 27 repeatedly failing and refusing to pay minimum compensation at the rates required  
 28 by the California Law, currently \$12.00 per hour.

136. As alleged herein, Defendants do not pay Plaintiffs and Class Members a regular wage. As a result, Defendants have failed to comply with 29 U.S.C. § 206 in that they have failed to timely pay at least minimum wages for all hours worked to the Plaintiffs and Class Members.

137. As a result of the unlawful acts of Defendants, Plaintiffs and Class Members and all FLSA Plaintiffs who opt-in are entitled to recovery in the amounts of their respective unpaid minimum wages, liquidated damages, prejudgment interest, attorneys' fees and costs, and any other relief the Court deems just and proper pursuant to FLSA, 29 U.S.C. § 216(b).

138. Non-Representative Plaintiffs will be enforcing any of their respective individual rights and remedies for Defendant's failure to pay minimum wage under the Fair Labor Standards Act through arbitration.

## **FIFTH CAUSE OF ACTION**

**(Individual and Representative Claim Failure to Pay Required Overtime  
Wages in Violation of FLSA, 29 U.S.C. § 207; 29 CFR §778.106)  
(GLINOGA, GONZALEZ, and NEELY Against All Defendants)**

139. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

140. At all times relevant, Defendants employed and continue to employ “employee[s]” within the meaning of FLSA, 29 U.S.C. § 203.

141. However, Defendants have willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA by failing to pay Plaintiffs and Class Members overtime wages as required by 29 U.S.C. § 207.

142. Defendants engaged in this practice throughout the three-year statute of limitations that applies to this action pursuant to 29 U.S.C. § 255.

143. Therefore, at all times relevant, Defendants operated under and continue to operate under a common policy and plan of willfully, regularly, and

1 repeatedly failing and refusing to pay Plaintiffs and Class Members overtime  
 2 compensation at the rates required by the FLSA, 29 U.S.C. § 207 for work  
 3 performed in excess of forty (40) hours per workweek to which they were and are  
 4 entitled.

5 144. Pursuant to 29 CFR § 778.106, Defendants are required to pay  
 6 overtime compensation earned in a workweek on the regular pay day for the period  
 7 in which such workweek ends. When the correct overtime compensation cannot be  
 8 calculated until after the regular payday, then the FLSA requires that the overtime  
 9 payment be made as soon after the regular payday as is practicable, but no later than  
 10 the next pay day after the computation can be made.

11 145. As alleged herein, Defendants do not pay Plaintiffs and Class Members  
 12 overtime. As a result, Defendants have failed to comply with California Labor Code  
 13 § 510 in that they fail to timely pay overtime wages to Plaintiffs and Class Members.

14                   ***Failure to Compensate for Time Waiting for Ride Notifications  
 15 on Uber's App Has Led to a Failure to Account for Hours Worked, Leading to a  
 16 Failure to Pay Overtime***

17 146. Specifically, Plaintiffs GLINOGA, GONZALES, and NEELY have  
 18 been driving for Defendants prior to March 1, 2019 continuing up to and until  
 19 approximately March of 2020. During the entirety of his employment, Plaintiff  
 20 GLINOGA worked approximately 60 hours per week on average but was only paid  
 21 by Defendants for approximately 30 of those hours on average. During the entirety  
 22 of his employment, Plaintiff GONZALES worked approximately 50 to 60 hours per  
 23 week but was only paid by Defendants for approximately 40 to 42 of those hours  
 24 on average. During the entirety of his employment, Plaintiff NEELY worked  
 25 approximately 55 hours per week but was only paid by Defendants for  
 26 approximately 25 of those hours on average. As such, Plaintiffs GLINOGA,  
 27 GONZALES, and NEELY were not earning minimum wage. Defendants engaged  
 28 in this practice throughout the three-year statute of limitations that applies to this

1 action pursuant to 29 U.S.C. § 255.

2       147. Specifically, Plaintiff GLINOGA worked approximately seven days a  
3 week while employed by UBER. From Monday through Thursday, Plaintiff  
4 GLINOGA regularly worked from 5:00 p.m. to 12:00 a.m., for a total of  
5 approximately seven hours a day. If Plaintiff GLINOGA did not have to report to  
6 his day job, he would work on Mondays through Thursdays from approximately  
7 6:00 a.m. to 12:00 p.m., then again from 2:00 pm to 12:00 am, for a total of sixteen  
8 hours, with a two-hour break in between. On Fridays, Plaintiff GLINOGA regularly  
9 worked from approximately 5:00 p.m. to 2:00 a.m., for a total of approximately nine  
10 hours. On Saturdays and Sundays, Plaintiff regularly worked from approximately  
11 10:00 a.m. to 4:00 p.m., then again from 5:00 p.m. to 2:00 a.m., for a total of 15  
12 hours, with a one-hour break in between. During these times, Plaintiff GLINOGA  
13 had his UBER application set to “on” while he was either transporting passengers,  
14 or waiting for his next customer to request a ride. Plaintiff GLINOGA turned his  
15 Uber application “on” at the start of his day, and left the app on the entire time, with  
16 the exception of his one or two-hour breaks. During the entirety of his employment  
17 with UBER, Plaintiff GLINOGA earned approximately \$700.00 per week (Sunday  
18 through Saturday), for working a total of approximately 67 hours worked a week on  
19 average, 27 of which were subject to a . Accordingly, Plaintiff GLINOGA was  
20 earning approximately \$10.44 per hour while employed by UBER. Often times, a  
21 third or more of Plaintiff GLINOGA’s earnings were used to pay for gas for his  
22 vehicle.

23       148. Moreover, Plaintiff NEELY consistently worked six days a week while  
24 employed by UBER, during a work week of Sunday through Saturday. From  
25 Monday through Friday, Plaintiff NEELY regularly left his house, got in his car,  
26 and turned the UBER application “on” at approximately 7:00 a.m. Plaintiff NEELY  
27 left the application “on” all day, while he was either transporting passengers, or  
28 waiting for his next customer to request a ride. From Monday through Friday,

1 Plaintiff NEELY regularly turned the UBER application off for approximately one  
2 hour around 11:30 a.m. or 12:00 p.m. noon, in order to eat something and rest. On  
3 Mondays through Fridays, at approximately 5:00 to 6:00 p.m., Plaintiff NEELY  
4 would set his Uber application to a “destination” filter, which allowed the  
5 application to find him rides that were heading towards his home. Plaintiff NEELY  
6 generally turned his UBER application off and got home at approximately 6:30 p.m.  
7 on Monday through Friday, after working approximately ten hours total per day.  
8 On Saturdays, Plaintiff NEELY worked approximately five to six hours total, either  
9 in the morning or in the afternoon, with his UBER application set to “on” the entire  
10 time, with no breaks in between. Plaintiff NEELY did not work on Sundays.  
11 During the entirety of his employment with UBER, Plaintiff NEELY earned  
12 approximately \$85.00 to \$120.00 per day, while working at least ten hours a day.  
13 Accordingly, Plaintiff NEELY was earning approximately \$8.50 per hour (less than  
14 minimum wage) while employed by UBER.

149. Moreover, Plaintiff GONZALES worked 7 days a week while  
150 employed by UBER. From Monday through Thursday, Plaintiff GONZALES  
151 regularly left his house, got in his car, and turned the UBER application “on” at  
152 approximately 5:00 a.m. to 10:00 a.m. On Friday through Sunday, Plaintiff  
153 GONZALES left the application “on” from 3:00 pm to 3:00pm, with rare breaks  
154 during slower times. Plaintiff GONZALES, typically worked 40-50 hours a week  
155 (10 of which were overtime hours worked), and about 15 times a year would work  
156 50-60 a week (10 to 20 of them as overtime hours worked). During the entirety of  
157 his employment with UBER, Plaintiff NEELY earned approximately \$85.00 to  
158 \$120.00 per day, while working at least ten hours a day. Accordingly, Plaintiff  
159 NEELY was earning approximately \$8.50 (less than minimum wage) per hour while  
160 employed by UBER.

## Specific Workweeks of Plaintiff GONZALEZ:

- July 15 to 22, 2019 he totaled 54h 24m “online” / 38h 53m “active”

- 1           • Oct 21 to 28, 2019 he totaled 44h 10m “online” / 37h 13m “active”
- 2           • Dec 2 to 9, 2019 he totaled 50h 7m “online” / 35h 42m “active”
- 3           • Jan 20 to 27, 2020 he totaled 66h 4m “online” / 39h 15m “active”

4           155. These differential demonstrate how Plaintiff GONZALEZ waiting  
 5 hours in a work week for which they were not compensated as “waiting time,” thus  
 6 leading to a failure to be paid minimum wage, as well as failure to pay at an overtime  
 7 rate for applicable hours worked over 40 in a work week.

8           156. Specifically, Plaintiffs GLINOGA, GONZALES, and NEELY have  
 9 been driving for Defendants prior to March 1, 2019 continuing up to and until  
 10 approximately March of 2020. During the entirety of his employment, Plaintiff  
 11 GLINOGA worked approximately 20 hours of overtime each week on average.  
 12 During the entirety of his employment, Plaintiff GONZALES worked  
 13 approximately 10 to 20 hours of overtime each week on average. During the  
 14 entirety of his employment, Plaintiff NEELY worked approximately 15 hours of  
 15 overtime each week on average. To date, Defendants have not paid Plaintiffs  
 16 GLINOGA, GONZALES, and NEELY proper overtime pay for the overtime hours  
 17 they worked.

18           157. Specifically, Plaintiff GLINOGA worked approximately seven days a  
 19 week while employed by UBER. From Monday through Thursday, Plaintiff  
 20 GLINOGA regularly worked from 5:00 p.m. to 12:00 a.m., for a total of  
 21 approximately seven hours a day. If Plaintiff GLINOGA did not have to report to  
 22 his day job, he would work on Mondays through Thursdays from approximately  
 23 6:00 a.m. to 12:00 p.m., then again from 2:00 pm to 12:00 am, for a total of sixteen  
 24 hours, with a two-hour break in between. On Fridays, Plaintiff GLINOGA regularly  
 25 worked from approximately 5:00 p.m. to 2:00 a.m., for a total of approximately nine  
 26 hours. On Saturdays and Sundays, Plaintiff regularly worked from approximately  
 27 10:00 a.m. to 4:00 p.m., then again from 5:00 p.m. to 2:00 a.m., for a total of 15  
 28 hours, with a one-hour break in between. During these times, Plaintiff GLINOGA

had his UBER application set to “on” while he was either transporting passengers, or waiting for his next customer to request a ride. Plaintiff GLINOGA turned his Uber application “on” at the start of his day, and left the app on the entire time, with the exception of his one or two-hour breaks. During the entirety of his employment with UBER, Plaintiff GLINOGA earned approximately \$700.00 per week, for working a total of approximately 67 hours a week on average. Accordingly, Plaintiff GLINOGA was earning approximately \$10.44 per hour while employed by UBER. Often times, a third or more of Plaintiff GLINOGA’s earnings were used to pay for gas for his vehicle.

158. Moreover, Plaintiff NEELY consistently worked six days a week while employed by UBER. From Monday through Friday, Plaintiff NEELY regularly left his house, got in his car, and turned the UBER application “on” at approximately 7:00 a.m. Plaintiff NEELY left the application “on” all day, while he was either transporting passengers, or waiting for his next customer to request a ride. From Monday through Friday, Plaintiff NEELY regularly turned the UBER application off for approximately one hour around 11:30 a.m. or 12:00 p.m. noon, in order to eat something and rest. On Mondays through Fridays, at approximately 5:00 to 6:00 p.m., Plaintiff NEELY would set his Uber application to a “destination” filter, which allowed the application to find him rides that were heading towards his home. Plaintiff NEELY generally turned his UBER application off and got home at approximately 6:30 p.m. on Monday through Friday, after working approximately ten hours total per day. On Saturdays, Plaintiff NEELY worked approximately five to six hours total, either in the morning or in the afternoon, with his UBER application set to “on” the entire time, with no breaks in between. Plaintiff NEELY did not work on Sundays. During the entirety of his employment with UBER, Plaintiff NEELY earned approximately \$85.00 to \$120.00 per day, while working at least ten hours a day. Accordingly, Plaintiff NEELY was earning approximately \$8.50 to \$12.00 per hour while employed by UBER.

159. Plaintiffs GLINOGA and NEELY fondly recall working well over forty (40) hours in a seven-day workweek during the holiday season. For example, Plaintiff NEELY recalls working over forty (40) hours per week during the time from December 19, 2017 through January 2, 2018. Plaintiff GLINOGA also recalls working over forty (40) hours per week during the time from December 19, 2017 through January 2, 2018, as well as the week of October 31, 2016, and the week of November 21, 2016.

160. At all times relevant, Defendants have also operated under and continue to operate under a common policy and plan of willfully, regularly, and repeatedly failing and refusing to pay overtime compensation at the rates required by Labor Code § 510.

161. As a result of the unlawful acts of Defendants, Plaintiffs and all FLSA Class Members who opt-in are entitled to recovery in the amounts of their respective unpaid overtime wages, liquidated damages, prejudgment interest, attorneys' fees and costs, and any other relief the Court deems just and proper.

162. Non-Representative Plaintiffs will be enforcing any of their respective individual rights and remedies for Defendant's violation of unpaid overtime under the FLSA through arbitration.

## **SIXTH CAUSE OF ACTION**

**(Individual and Representative Claim Under the California  
Unfair Business Practices Act, California  
Business and Professions Code §§ 17200, *et seq.*)**

(GLINOGA, GONZALEZ, and NEELY Against All Defendants)

163. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

164. Defendants, and each of them, are “persons” as defined under Business and Professions Code § 17021.

165. Plaintiffs are informed and believe and based thereon allege that

1 Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof.  
2 Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this  
3 Complaint and which allegations are incorporated herein by reference and include,  
4 but are not limited to:

- 5 (a) Defendants' policy or practice of not paying Plaintiffs  
6 minimum wages and overtime compensation in  
7 violation of California law and FLSA;
- 8 (b) Defendants' policy or practice of not paying ride-  
9 share drivers all their wages due in their final  
10 paychecks immediately upon involuntary  
11 termination or when 72-hour notice was provided  
12 before voluntary resignation, is unlawful under Labor  
13 Code §§ 201, 202 and/or 203;
- 14 (c) Defendants violated Labor Code § 204 by not paying  
15 Plaintiffs in a timely fashion;
- 16 (d) Defendants violated Labor Code §§ 226 by not  
17 providing accurate pay stubs; and
- 18 (e) Defendants violated California Industrial Welfare  
19 Commission (“IWC”) Wage Order Nos. 4-2001,  
20 4-2000, and 4-1998 by not keeping accurate time  
21 records;

22 166. The practices described above were unfair within the meaning of Cal.  
23 Bus. & Prof. Code § 17200, *et seq.*, because the acts were intentionally performed  
24 to harm Plaintiffs.

25 167. Plaintiffs are informed and believe, and based thereon allege, that the  
26 unlawful, unfair, and fraudulent business practices described above present a  
27 continuing threat to members of the public because Defendants continue to operate  
28 in the illegal manner as alleged above.

168. Further, such skirting of the California labor laws presents a threat to the general public in that the enforcement of the labor laws is essential to ensure that all California employers compete equally, and that no California employer receives an unfair competitive advantage at the expense of its employees.

169. As a result of the above-alleged misconduct, Plaintiffs, on behalf of themselves and Class Members, have been deprived of lawful wages to which they were entitled. Plaintiffs and Class Members have suffered damages, in an amount to be determined according to proof at trial.

170. The unfair, fraudulent, and unlawful business practices of Defendants are likely to continue because Defendants appear to have a pattern and practice of committing the same type of misconduct as alleged herein. Therefore, the imposition of a preliminary injunction is justified.

171. As a direct and proximate result of the above-alleged misconduct, Plaintiffs are entitled to and hereby seek injunctive relief and restitution for, among other things, back pay, and other lost benefits in an amount to be proven at trial from the date *Dynamex* was published to the date of trial.

172. As a direct and proximate result of the aforesaid acts and conduct of said Defendants, Plaintiffs are entitled to and hereby seek attorneys' fees as permitted by law and as provided for by §1021.5 of the California Code of Civil Procedure.

173. Non-Representative Plaintiffs will be enforcing any of their respective individual rights and remedies for Defendant's violation of Business & Professions Code § 17200 through arbitration.

11

## PRAYER

1. For damages according to proof, including loss of earnings, deferred compensation, and other employment benefits, and interest thereon;

1       2.     For interest provided by law including, but not limited to, Civil Code  
2     § 3291;

3       3.     For general unpaid wages at overtime wage rates and such general and  
4     special damages as may be appropriate;

5       4.     For statutory penalties pursuant to California Labor Code §226(e);

6       5.     For statutory wage penalties pursuant to California Labor Code §§  
7     1770-1773;

8       6.     For restitution of unpaid wages to Plaintiff and prejudgment interest  
9     from the day such amounts were due and payable;

10      7.     For reasonable attorneys' fees and costs of suit incurred herein  
11     pursuant to California Code of Civil Procedure § 1021.5;

12      8.     For injunctive relief pursuant to California Labor Code § 2750.3,  
13     subdivision (j), and Business & Professions Code § 17200, et seq.;

14      9.     For declaratory relief that UBER's ride share drivers, Plaintiffs and  
15     Class Members herein, are not independent contractor, but employees, under the  
16     *Dynamex ABC Test*;

17      10.    For civil penalties pursuant to California Labor Code § 2699(a) and/or  
18     2699(f) and (g) in the amount of at least one hundred dollars (\$100) for each  
19     violation per pay period for the initial violation and two hundred dollars (\$200) for  
20     each aggrieved employee per pay period for each subsequent violation, plus costs  
21     and attorneys' fees for violation of California Labor Code §§ 201, 202, 203, 204,  
22     226(a), 226.8, 510, 1194, 1197, 1198 and 1770-1773 et seq.;

23      11.    For costs incurred by Plaintiff, including reasonable attorneys' fees  
24     and costs of suit, in obtaining the benefits due to Plaintiffs and for violations of  
25     Plaintiffs' civil rights as set forth above; and pursuant to the Labor Code §§ 218.5,  
26     218.6, 226(e), 1194(a), 2699; and California Code of Civil Procedure section  
27     1021.5; and

28      12.    For such other and further relief as the court deems just and proper.

1  
2  
3 Dated: January 4, 2021

4  
5  
6 WEST COAST TRIAL LAWYERS, APLC

7  
8  
9  
10  
11 /s/  
12 By: \_\_\_\_\_  
13 Ronald L. Zambrano  
14 Attorney for Plaintiffs and Class  
15 Members, NICHOLAS JERICHO, et al.

16  
17 **DEMAND FOR JURY TRIAL**  
18

19 Plaintiffs hereby respectfully demand a jury trial.  
20  
21

22 Dated: January 4, 2021

23  
24 WEST COAST EMPLOYMENT  
25 LAWYERS, APLC  
26  
27  
28

/s/  
By: \_\_\_\_\_  
Ronald L. Zambrano  
Attorney for Plaintiffs and Class Members,  
NICHOLAS JERICHO, et al.